

ORDER NO. 781

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Tony L. Hammond; and  
Nanci E. Langley

Rate Adjustment Due to Extraordinary or  
Exceptional Circumstances

Docket No. R2010-4R

ORDER CLARIFYING COMMENT PROCEDURES

(Issued July 29, 2011)

I. INTRODUCTION

On July 26, 2011, the Public Representative filed a motion to strike portions of the Postal Service's initial comments, or, in the alternative, to extend the procedural schedule in this proceeding.<sup>1</sup> On July 27, 2011, a similar motion to strike portions of the Postal Service's comments was filed by a group of mailers.<sup>2</sup> To facilitate the orderly conduct of these proceedings, the Commission is issuing this order to clarify the procedures previously established by its initial order on remand.<sup>3</sup> As discussed below,

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<sup>1</sup> Public Representative Motion to Strike Portions of the Postal Service's Initial Comments or for Alternative Relief, July 26, 2011 (Public Representative Motion).

<sup>2</sup> Motion to Strike of Alliance of Nonprofit Mailers, Association for Postal Commerce, Direct Marketing Association and Magazine Publishers of America, Inc., July 27, 2011 (ANM, et al. Motion).

<sup>3</sup> Notice and Order Establishing Procedures on Remand, July 11, 2011, at 4 (Order No. 757).

reply comments shall be limited to a discussion of the causation standard and should not address the disputed portions of the Postal Service's comments identified in either the Public Representative Motion or the ANM, et al. Motion. Action on the matters raised by both motions will be addressed by a future Order.

## II. BACKGROUND

On July 11, 2011, the United States Court of Appeals for the District of Columbia Circuit issued its mandate in *United States Postal Service v. Postal Regulatory Commission*, 640 F.3d 1263 (D.C. Cir. 2011) remanding the case to the Commission to consider the proper interpretation of the words "due to" in 39 U.S.C. 3622(d)(1)(E).<sup>4</sup> On that same day, the Commission issued Order No. 757 establishing remand procedures intended to give interested parties the opportunity to express their views on the interpretation of the "due to" phrase:

To ensure that the Postal Service and other interested persons have an opportunity to make their views known regarding the proper interpretation of 'due to' as the standard of causation in 39 U.S.C. 3622(d)(1)(E), the Commission hereby provides for submission of initial and reply comments on this topic.

Order No. 757 at 4.

On July 25, 2011, a number of parties, including the Postal Service, filed initial comments. In its comments, the Postal Service sought to address both "the standard that should be used to determine whether an exigent increase is 'due to' the identified 'extraordinary or exceptional circumstances'" and the application of that standard. See

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<sup>4</sup> Section 3622(d)(1)(E) authorizes the Postal Service to seek exigent rate adjustments. In its July 11, 2011 opinion, the Court of Appeals held that the phrase "due to" in section 3622(d)(1)(E) is ambiguous "regarding the closeness of the causal connection" between the exigent circumstances and the rate adjustments requested by the Postal Service and remanded the case to the Commission to determine in the first instance "how closely the amount of the adjustments must match the amount of the revenue lost as a result of the exigent circumstances." 640 F.3d at 1268.

Initial Comments of the United States Postal Service Regarding Court Remand, July 25, 2011, at 1-3 (Postal Service Comments).

### III. THE MOTIONS TO STRIKE

Both the Public Representative and ANM, et al. assert that certain portions of the Postal Service Comments should be stricken on several grounds, including the assertion that the identified comments exceed the scope of the comments requested by Order No. 757. Public Representative Motion at 1; ANM, et al. Motion at 1-2.

As an alternative to its request that the Commission strike portions of the Postal Service Comments, the Public Representative asks the Commission "to clarify that none of the new testimony or argument [presented by the Postal Service] will be considered prior to establishing a causation standard, and that reply comments do not have to address the material at this time." Public Representative Motion at 2. In addition, the Public Representative asks that a 45-day comment period following the Commission's announcement of its interpretation of the "due to" phrase be established to address the challenged material contained in the Postal Service Comments. *Id.* Finally, the Public Representative requests that the August 1, 2011 deadline for reply comments established by Order No. 757 "be extended day-by-day until the issues of [its] motion are resolved." *Id.*

Unlike the Public Representative Motion, the ANM, et al. Motion does not propose additional procedures for commenting on the portions of the Postal Service Comments to which ANM, et al. objects. Instead, the ANM, et al. suggests that the Postal Service retains "the right to submit any evidence of causation it wishes as part of a new request for an exigent rate increase." ANM, et al. Motion at 2.

Both the Postal Service and the American Postal Workers Union, AFL-CIO (APWU) have filed answers opposing the Public Representative Motion.<sup>5</sup> While both parties oppose the request that portions of the Postal Service Comments be stricken, both agree that a more modest revision of the procedural schedule be made than the 45-day comment period proposed by the Public Representative. Postal Service Opposition at 3-4; APWU Opposition at 1.

#### IV. DISCUSSION

In Order No. 757, the Commission solicited comments addressing the proper interpretation of the "due to" language in section 3622(d)(1)(E). In an effort to achieve a timely decision on remand, the Commission established relatively short initial and reply comment deadlines. The Commission believes that a prompt resolution of this proceeding will be facilitated by limiting reply comments to a discussion of the proper interpretation of section 3622(d)(1)(E)'s "due to" language as a causal link in exigent rate cases. Accordingly, the parties are directed to limit their reply comments to the legal issue regarding the interpretation of section 3622(d)(1)(E). The parties should not address those sections of the Postal Service Comments that are the subject of the Public Representative Motion or the ANM, et al. Motion.

The matters raised in the motions of both the Public Representative and ANM, et al. will be addressed in a future order, including questions regarding whether to establish additional comment procedures and deadlines.

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<sup>5</sup> Opposition of the United States Postal Service to Public Representative's Motion to Strike or for Alternative Relief, July 26, 2011 (Postal Service Opposition); Opposition of American Postal Workers Union, AFL-CIO to Public Representative's Motion to Strike or for Alternative Relief, July 27, 2011 (APWU Opposition).

*It is ordered:*

1. As established by Order No. 757 and clarified as discussed in the body of this Order, reply comments are due August 1, 2011.
2. The matters addressed by the Public Representative Motion and the ANM, et al. Motion will be addressed by a future order.

By the Commission.

Shoshana M. Grove  
Secretary